

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 9)
of the Communications Act)

MD Docket No. 94-19

Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)

GTE's COMMENTS

GTE Service Corporation and its affiliated
domestic telephone, equipment and
service companies

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TABLE OF CONTENTS

| | <u>PAGE</u> |
|---|-------------|
| SUMMARY | iii |
| 1. The Commission should create additional fee category standards for determining "large" regulatory fee amounts..... | 2 |
| 2. Large fee determination should be based on the fees owed by the holding company | 4 |
| 3. The Commission should clarify that regulatory fees are to be based on measurements taken on December 31 of each year..... | 5 |
| 4. The Commission should modify section 0.457 of its rules to treat regulatory fee information as confidential..... | 5 |
| 5. Payers should be permitted access to the Commission's database to verify that regulatory fee payment has been received..... | 7 |
| 6. The regulatory fees for public mobile services for which the number of subscribers cannot readily be determined should be based on the number of mobile transceivers in operation..... | 8 |
| 7. The FCC should amend the proposed rules so that the regulatory fees for LECs and CAPs are based on the same criteria | 9 |
| 8. Licensees that transfer or assign licenses during fiscal 1994 should be allowed to pro-rate there 1994 regulatory fees based on the amount of time the license was held | 10 |
| 9. Joint licensees should be allowed to determine through negotiations how the regulatory fees for jointly licensed facilities will be divided | 12 |
| 10. Licensees should be eligible for a partial refund of pre-paid regulatory fees when facilities are taken out of service during the assessment period | 12 |
| 11. Regulatory fees should be treated as exogenous costs under price caps..... | 13 |

SUMMARY

1. GTE asks the Commission to establish standards for "large" regulatory fee payers in categories other than those established in the NPRM. Specifically, GTE believes that, for all other categories, user fees in excess of \$250,000 should be considered large, and payers of fees in excess of this amount should be able to make installment payments.

2. GTE argues that, for purposes of determining whether the regulatory fees paid by LECs are "large," the Commission should consider the total amount paid by the LEC holding company rather than the amounts paid by individual operating companies.

3. GTE asks the Commission to clarify that regulatory fees are to be based on counts and measurements taken on December 31 of each year.

4. GTE contends that the Commission should treat as confidential the amount of regulatory fee paid and the information on which that amount is based.

5. GTE urges the Commission to give regulatory fee payers access to the Commission's regulatory fee database so that payers can verify that payments are received by the lockbox bank.

6. GTE asks the Commission to find that the regulatory fees for public mobile services for which the number of subscribers cannot readily be determined should be based on the number of mobile transceivers in operation.

7. GTE argues that the Commission should amend its proposed rules to provide that the regulatory fees paid by LECs and CAPs are based on the same criteria.

8. GTE asks the Commission to allow licensees that transfer or assign licenses during fiscal year 1994 to pro-rate their 1994 regulatory fees.

9. GTE asks the Commission to allow joint licensees to determine through negotiations how the regulatory fees for jointly licensed facilities will be divided.

10. GTE states that licensees should be eligible for a partial refund of pre-paid regulatory fees when facilities are taken out of service during the assessment period.

11. GTE argues that regulatory fees be treated as exogenous costs under price cap regulation.

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GTE's COMMENTS

GTE Service Corporation ("GTE") on behalf of its affiliated domestic telephone, equipment, and service companies, hereby submits comments in response to the Federal Communication Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("Notice" or "NPRM"), in the above-captioned proceeding.¹

INTRODUCTION

On August 10, 1993, as part of the Omnibus Budget Reconciliation Act of 1993, Congress added section 9 to the Communications Act.² This section authorizes the Commission to assess and collect regulatory fees to recover the costs incurred in carrying out enforcement activities, policy and rulemaking activities, user

¹ Implementation of Section 9 of the Communications Act: Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Notice of Proposed Rulemaking, MD Docket No. 94-19, FCC 94-46 (released March 11, 1994).

² Pub. L. No. 103-66, Title VI, § 6003(a), 107 Stat. 397 (August 10, 1993). New section 9 of the Communications Act is codified at 47 U.S.C. § 159.

information services, and international activities. New subsection 9 (f)(1) directs the Commission to prescribe rules and regulations to carry out the provisions of section 9. Pursuant to that authority, the Commission adopted the above-captioned NPRM.

In the NPRM, the Commission makes tentative conclusions and proposes to adopt rules which would, inter alia, adopt for fiscal year 1994 the regulatory fee schedule set forth in the legislation; exempt certain entities from having to pay regulatory fees; define various classes of fee payers and allow payers of "large" regulatory fees to pay such fees in installments; adopt enforcement measures for late or delinquent payments; and explain the various regulatory fee categories.

DISCUSSION

1. The Commission should create additional fee category standards for determining "large" regulatory fee amounts

In the NPRM, the Commission notes that section 9(f) of the legislation directs the Commission to adopt regulations that permit the payment of large regulatory fee amounts in installments and the payment of small amounts in advance. The Commission proposes to create three classes of regulatory fees based on the size of the annual fee amount.³ The Commission defines "large" amounts as "those fees which are significantly higher than all others," and proposes to allow payers of large fee amounts to elect to make payments in two installments in fiscal year 1994. The Commission seeks comment on this proposal and on its proposal to allow four or more installment payments in future years. The Commission identifies fee amounts for four regulatory fee categories that appear relatively large, they are: above \$12,000 for VHF

³ NPRM, supra, at ¶ 26.

and UHF Commercial Television Stations; above \$18,500 for Cable Television Systems; above \$500,000 for Inter-exchange Carriers; and above \$700,000 for Local Exchange Company ("LEC") holding companies.⁴

GTE endorses the Commission's proposal to allow payers of large amounts to submit their annual user fee payment on an installment basis, and strongly supports the proposal to allow such payers the option of making future payments in at least four installment payments. This payment method allows the Commission to receive full timely payment of regulatory fees in a manner that is least burdensome or onerous to payers.

GTE contends, however, that the NPRM, in identifying large fee amounts for various regulatory fee categories, overlooks large fee amounts for several other classes of regulatory fee payers. These entities may face regulatory fee burdens in excess of those amounts considered large for other classes of carriers, but, under the rules proposed in the NPRM, would be required to make payment in one lump sum. For example, under the proposed fee schedule, GTE Spacenet would likely face regulatory fees in excess of \$500,000 – an amount considered large if owed by an inter-exchange carrier. Because the NPRM does not identify a large fee benchmark for satellite carriers, however, GTE Spacenet would be required to pay its fees in lump sum. Similarly, other classes of carriers may face onerous regulatory fees yet be unable to elect to make installment payments. GTE submits that the Commission's failure to identify large fee benchmarks for carriers other than those listed in paragraph 31, puts

⁴ Id., at ¶ 31.

these carriers at a disadvantage. There is no reason why carriers in other categories that must pay regulatory fees comparable to fee amounts considered large in other categories should not be able to elect to pay their regulatory fees in installments. Requiring such carriers to make lump sum payments would put such carriers at a disadvantage relative to carriers with similar regulatory fee obligations that may elect to make installment payments.

GTE therefore proposes that the Commission modify its proposed eligibility criteria for large fee payers by setting a large fee benchmark for all classes of regulated entities not identified in the NPRM. GTE submits that regulatory fee payers in these other categories owing more than \$250,000 in fees should be eligible to make payments in installments. GTE believes that this modification would enable the Commission to collect its annual user fee assessments in a manner that is more equitable than the proposal in the NPRM.

2. Large fee determination should be based on the fees owed by the holding company

In identifying "large fee" categories, the Commission proposes to consider a local exchange carrier holding company a "large" fee payer if its regulatory fees for fiscal year 1994 exceed \$700,000. Specific comment was invited on whether, for purposes of determining if LEC regulatory fees are large, the Commission should consider the regulatory fees owed by individual telephone operating companies or the total owed by the LEC holding company. GTE proposes that the Commission base the large payer determination on the fees owed by the holding company. Basing the large payer determination on the holding companies fee obligation recognizes the impact of these

fees on the entire company rather than focusing on individual business units. Because the regulatory fee obligations of GTE and many other companies are likely to be very large, this option would allow companies greater flexibility in the management of company cash flow, thereby reducing the company-wide burden imposed by these fees.

3. The Commission should clarify that regulatory fees are to be based on measurements taken on December 31 of each year

The NPRM does not indicate the date on which regulatees must base counts and measurements that will be used to calculate regulatory fees. GTE recommends that December 31 of each year be set as the universal measurement or count date. The majority of companies impacted by these fees operate and are regulated on a calendar year basis. Using December 31 as the universal count date would provide the Commission with the most readily available and reliable data. Counts taken at this date will be consistent with reports many regulated entities file annually with the Commission – such as the Automated Reporting and Management Information Systems (“ARMIS”) reports. This count date would also coincide with the date on which various filings with the Securities and Exchange Commission are based. Thus, setting the count date at December 31 would ease the administrative burden on the Commission and on payers by requiring them to track only one fixed counting or measurement date.

4. The Commission should modify section 0.457 of its rules to treat regulatory fee information as confidential

Regulatory fees are based on the licenses and types of facilities held, or on the number of subscribers. Thus, the amount of the regulatory fees paid by a company may enable competitors to determine sensitive business information about regulatees

not readily obtainable from a public source. For example, the regulatory fees paid by a cellular carrier may reveal subscriber counts, and the amount paid by a satellite carrier may reveal proprietary information about the carrier's network facilities.

Accordingly, GTE requests that the Commission modify section 0.457(d) of its Rules to provide that regulatory fee amounts and the data on which the calculation of the fee is based are not routinely available for public inspection.⁵ Section 0.457(d) of the Commissions Rules provides for withholding information containing trade secrets and commercial or financial information from routine public inspection. GTE believes that regulatory fee information is privileged and confidential commercial or financial information and should be protected under section 0.457(d). GTE can see no reason section 9 of the Communications Act or in the proposed rules why such information should be made available to the public. Moreover, treating such information as confidential would not prevent the Commission from collecting regulatory fees and the information on which the fee is based, or from conducting confidential audits of companies' compliance with Commission rules. Finally, providing for confidential treatment of regulatory fee payment information would ease the administrative burden -- on both the Commission and payers -- associated with requiring payers to seek confidential treatment each time fees are paid. Absent confidential treatment, the Commission should allow carriers to calculate the regulatory fee owed for each license, but submit a check for the total amount for all licenses, along with a list identifying the licenses for which the check applies.

⁵ 47 C.F.R. § 0.457(d).

5. Payers should be permitted access to the Commission's database to verify that regulatory fee payment has been received

Section 9(c) of the Communications Act and the proposed rules provide the Commission with three methods of enforcement: monetary penalties for late payment, dismissal of applications, and license revocation.⁶ Thus, the consequences that a payer could face for an inadvertent late payment or an administrative error are severe. The application of these remedies will be based on whether or not the regulatory fee is received at the lockbox bank.⁷ Therefore, in order to ensure an effective regulatory fee collection program and to reduce the chances that a carrier will be penalized for an administrative error, GTE proposes that a licensee be permitted access to the FCC's database to verify that the regulatory fee payment has been received at the lockbox bank by the due date.⁸ Providing payers with access to the Commission database will serve the public interest by helping to ensure that regulatory fees are paid in a timely manner.⁹ In keeping with our concerns regarding the confidentiality of payer information, however, the Commission should allow public access only to information

⁶ NPRM, supra, at ¶ 40-45.

⁷ See, Id., at ¶ 41 (a late penalty of 25 percent will be assessed if the payment is not received by the established date).

⁸ In lieu of access to the database to verify acceptance, payers would have to verify payment through registered or return receipt mail or courier services. These methods are not as efficient or as reliable as database access verification.

⁹ To facilitate payer access to regulatory fee data, the Commission should consider developing a data recording process similar to the systems used in the banking, mortgage, and credit card service industries. The Commission's Bank in Pittsburgh – the Mellon Bank – might provide such a service for the Commission.

regarding the identity of the payer – stating the entity name or an FCC-assigned payer number – and the date payment was received. As we stated above, the amount of the check and other information should be treated as confidential and need not be accessed in order to verify receipt of payment.

6. The regulatory fees for public mobile services for which the number of subscribers cannot readily be determined should be based on the number of mobile transceivers in operation

The NPRM provides that the user fees for cellular and mobile services will be assessed based on the number of subscribers to the service.¹⁰ The NPRM does not indicate, however, how the number of subscribers is to be determined for mobile services for which the number of subscribers cannot readily be determined. GTE submits that, for services for which a subscriber count is not determinable, the term subscriber should be defined as: (1) for individual service, a person who has agreed to purchase service for a mobile or fixed station; and (2) for public service, a mobile transceiver capable of communicating with a common carrier's base station.

Most common carrier regulatory fees are based on the size of a regulatee's communication operation.¹¹ The number of subscribers, where determinable, is an indication of the size of a mobile service provider's operation. However, for some mobile services, such as air-ground service or credit card cellular services, service is available to the general public and the number of subscribers cannot be determined. For these services, the number of mobile transceivers in operation is the best measure

¹⁰ NPRM, supra, at ¶ 79.

¹¹ Id., at ¶ 78.

of the size of the provider's network because this factor determines the number of calls that can be made on a public mobile system. For example, in the case of air-ground service, the number of air transceivers determines the number of calls that can be made from the aircraft. On an analog system on an aircraft with four air transceivers, regardless of the number of handsets, generally no more than four air-to-ground calls could be placed at one time. Thus, for public mobile services with an indeterminable number of subscribers, defining "subscribers" of public mobile services as the number of mobile transceivers most closely replicates the Commission's objective in basing regulatory fees on the number of subscribers. Accordingly, the Commission should clarify its rules with respect to public mobile services for which a subscriber count cannot otherwise be determined to define the term "subscriber" as the number of mobile transceivers that interface with a common carrier's base station.

7. The FCC should amend the proposed rules so that the regulatory fees for LECs and CAPs are based on the same criteria

The Commission's proposed schedule of regulatory fees requires LECs to pay regulatory fees in the amount of \$60.00 per 1,000 access lines.¹² Competitive access providers ("CAPs"), on the other hand, are required to pay fees of \$60.00 per 1,000 subscribers.¹³ Basing CAPs' regulatory fees on subscribers rather than access lines means that CAPs will pay lower regulatory fees relative to those paid by LECs and thus puts LECs at a substantial disadvantage.

¹² Id., at ¶ 89.

¹³ Id., at ¶ 90.

The proposed system is inequitable since many subscribers have more than one access line. For example, a subscriber with 100 access lines would only count as one unit in the calculation of a CAP's regulatory fees, but would count as 100 units in the calculation of a LEC's regulatory fees. Since most CAP subscribers are large business users in metropolitan areas, the vast majority of a CAP's subscribers are multiple line users. By comparison, only 3 percent of GTE's subscribers have multiple access lines. Accordingly, the disparity between the regulatory fees paid by CAPs relative to those paid by LECs is likely to be substantial. GTE opposes the inconsistent manner in which the NPRM proposed to calculate LEC and CAP regulatory fees. The Commission should adopt rules that calculate the regulatory fees for competitors based on consistent criteria.¹⁴

8. Licensees that transfer or assign licenses during fiscal year 1994 should be allowed to pro-rate their 1994 regulatory fees based on the amount of time the license was held

It is a fairly common practice in many areas of the telecommunications industry to merge or sell regulated facilities and transfer or assign licenses for these facilities to the entity acquiring them. The NPRM does not address the issue of how user fee payments should be made for licenses that have been transferred subsequent to the start of fiscal year 1994. GTE submits that it would not be equitable to require the "original" license holder to assume full user fee responsibility for a facility or a license

¹⁴ CAPs would have an advantage over LECs even if fees for both were based on the number of access lines, since most CAP customers are high-volume business users which generate large revenues per access line. LECs, on the other hand, serve more residential customers which generate much smaller revenues per line. Thus CAPs would pay the same regulatory fee per line for lines which generate much more revenue.

that has been transferred or assigned, when the "new" licensee has acquired the facility and is deriving revenue in fiscal year 1994 from its operation.

Original licensees that negotiated transfers of licenses occurring during fiscal year 1994 did not have the information necessary to enable them to factor in user fee responsibility as part of the overall sale and transfer agreement with the "new" licensee. For example, licensees were unaware that a single, "lump sum" payment would be required to cover the entire 1994 fiscal year. As a result, original licensees have made no provision in their contracts to recover an appropriate portion of regulatory fees from the transferee.

In order to make user fees for transferred or assigned licenses in fiscal year 1994 equitable, GTE recommends that the Commission allow licensees to pro-rate their 1994 regulatory fee payment based upon the number of months during the fiscal year that the license was held. For example, the user fee assessment for a license that was transferred in December 1993 would be divided so that the license holder for the first quarter of the fiscal year would pay one-fourth of the annual assessment. The entity that acquired the license would be responsible for payment of the remaining three-quarters of the annual user fee. In this example, pro-rating the user fee is more equitable since the transferee or assignee will have the benefit of deriving revenue from the facility for the latter three quarters of fiscal year 1994. Making each licensee, transferee, or assignee responsible for its pro-rata share of the regulatory fee obligation will also help to insure that there is no double payment for a facility held by two or more entities during the fiscal year.

The pro-rating of regulatory fee obligations need only apply for fiscal year 1994. In future years, licensees will have notice of the regulatory fee obligation attached to a facility license, and can recover the appropriate portion of user fees through contract negotiation with the acquiring entity. Thus, the future transfer or assignment of licenses will be transparent to the Commission as far as regulatory fees are concerned.

9. Joint licensees should be allowed to determine through negotiations how the regulatory fees for jointly licensed facilities will be divided

It is not uncommon for the Commission to approve joint license applications for a single facility. For example, the Commission approved an application for joint license of the GSTAR 1 satellite on March 1, 1994. The NPRM, however, does not address how user fee payments are to be divided in cases where a facility is co-licensed to two separate entities. GTE recommends that the Commission allow joint licensees to negotiate between themselves the payment for co-licensed facilities. In cases where the joint license is in effect for the entire assessment period, GTE recommends that the Commission allow the co-licensees to negotiate the appropriate division of the payment for the period of time that both entities hold the license. The original licensee would be responsible for payment for the portion of the year that it was sole licensee of the facility. This approach ensures that the Commission receives the total user fee assessment for the co-licensed facility, and equitably distributes the assessment cost between the two joint license holders.

10. Licensees should be eligible for a partial refund of pre-paid regulatory fees when facilities are taken out of service during the assessment period

The NPRM proposes to require the payment of "small" regulatory fees in advance for the entire license or authorization term.¹⁵ The NPRM, however, does not address the recovery of pre-paid user fees for facilities that are taken out of service during a fiscal year. GTE recommends that the Commission allow licensees to request partial refunds. This approach is similar to the refund mechanism established by the Commission for application processing fees assessed under section 8 of the Communications Act.¹⁶ Pursuant to section 1.1115 of the Commission Rules, parties may petition the Office of the Managing Director for fee waiver or refund.¹⁷ The Commission determines on a case-by-case basis whether a refund is warranted. It is particularly important to establish such a mechanism for regulatory fees assessed under section 9 since these fees will involve significantly higher amounts of money than section 8 application fees.

Where regulatory fees are not pre-paid and a facility is in use only part of the year, the Commission should allow licensees to pro-rate the regulatory fee based on the number of months the facility was licensed and operational. Thus, if payment is due on January 1, 1995 for regulatory fees assessed for fiscal year 1995, and a facility was licensed on December 1, 1994, the licensee should only be required to submit payment based on a ten month license. Allowing licensees to pro-rate fees in this manner will

¹⁵ Id., at ¶ 34-36. Initially, the Commission proposes that only the regulatory fees associated with private radio licenses and other authorizations be considered "small."

¹⁶ 47 U.S.C. § 158.

¹⁷ 47 C.F.R. § 1.1115.

reduce the number of refund requests filed and eliminate the administrative burden associated with filing and processing such requests.

11. Regulatory fees should be treated as exogenous costs under price caps

The NPRM likewise does not address whether regulatory fees will be treated as exogenous costs under price cap regulation. The Commission defines exogenous costs as "those costs that are triggered by administrative, legislative, or judicial action beyond the control of the carriers."¹⁸ The Commission contemplated the grant of exogenous treatment for costs triggered by government action. Regulatory fees are being imposed by the Commission to recover costs incurred in carrying out its enforcement activities, policy and rulemaking activities, user information services, and international activities. The costs imposed on carriers under new section 9 are triggered by government action and are clearly beyond the control of the carriers. These fees will not otherwise be reflected in the price cap formula (i.e., the GNPPI) so exogenous treatment will not lead to double counting. Accordingly, regulatory fees qualify for exogenous treatment under the LEC price cap plan and the Commission should clarify that such costs may be treated as exogenous by LECs.

¹⁸ Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, 6807 (1990).

In summary the Commission should amend or clarify its proposed rules regarding the assessment and collection of regulatory fees in the manner described above.

Respectfully submitted,

GTE Service Corporation and
its affiliated domestic telephone,
equipment, and service companies

A handwritten signature in cursive script, reading "Andre J. Lachance", written over a horizontal line.

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